

Maureen E. McFadden, SBN 203781  
LAW OFFICES OF MAUREEN E. MCFADDEN  
819 Bancroft Way  
Berkeley, CA 94710  
Ph (510) 845-5203  
Fax (510) 868-0976

Attorney for Plaintiff  
MEGAN KELLY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MEGAN KELLY,

Plaintiff,

vs.

APPLERA CORPORATION and DOES 1-20,  
inclusive,

Defendants.

Case No.: C-07-3002 MMC

**REPLY BRIEF IN SUPPORT OF  
MOTION FOR LEAVE TO FILE  
AMENDED COMPLAINT**

Date: April 4, 2008

Time: 9:00 a.m.

Courtroom 7, 19<sup>th</sup> Floor

The Honorable Maxine M. Chesney

**LEAVE TO FILE AN AMENDED COMPLAINT SHOULD BE GRANTED**

Applera's opposition brief suggests plaintiff's motion for leave to file a first amended complaint violated this Court's scheduling order, and that therefore "good cause" must be demonstrated. This is not accurate. The scheduling order did not contain a deadline for filing amendments to the pleadings. The liberal federal policy favoring amendment of pleadings [FRCP 15(a)], as set forth in plaintiff's moving papers, governs this motion.

Contrary to Applera's representations, plaintiff's request for leave to amend was quite prompt. Plaintiff's complaint was filed in April 2008. Since that time, Applera engaged in further conduct violative of its obligation to engage in the interactive process in good faith. Plaintiff should be permitted to add these new allegations. Plaintiff also wishes to amend the pleadings to reflect that Applera both regarding her as having a disability and had a record of her

1 having a disability, in conformance with discovery in the case to date. Finally, Applera engaged  
2 in new disability discrimination and retaliation against plaintiff from August 2007 – November  
3 2007. Plaintiff filed an amended charge of discrimination with the Department of Fair  
4 Employment and Housing that same month – November 2007 – and requested an immediate  
5 right to sue. Plaintiff cannot be blamed for the DFEH's failure to issue the requested right to sue  
6 letter until February 20, 2008, particularly given that the motion for leave to amend was filed  
7 within 10 days of receipt of the right to sue letter.

8 The new allegations are related to the original claims and allegations, and the interests of  
9 justice and the availability of judicial resources weigh in favor of having all plaintiff's claims  
10 heard at the same time. Based on the foregoing, plaintiff respectfully requests that the Court  
11 grant her motion for leave to amend, and amend the scheduling order to allow discovery on the  
12 new claims.

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14 DATED: March 21, 2008

LAW OFFICES OF MAUREEN E. MCFADDEN

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16 By:   
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Maureen E. McFadden

18 Attorney for Plaintiff  
19 MEGAN KELLY  
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